



**Teknekron Infoswitch
Corporation**

Cynthia S. Anthony
General Counsel and Secretary
- Special Counsel for International Operations

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Federal Communications Commission
Office of the Secretary

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May 22, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Teknekron Infoswitch Corporation--Comments to Commission Docket 92-90

Dear Ms. Searcy:

Enclosed please find an original and nine (9) copies (for each Commissioner's personal copy) of Comments by Teknekron Infoswitch Corporation in the above-referenced proceeding.

Should you have any questions concerning this matter, kindly contact our President, Michael J. Tamer (817-267-3025, ext. 401), or the undersigned.

Sincerely,

Cynthia S. Anthony

CSA/hmr
Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY 22 1992

Federal Communications Commission
Office of the Secretary

In the Matter of

The Telephone Consumer Protection
Act of 1991

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§

CC Docket No. 92-90

To: The Commission

COMMENTS OF TEKNEKRON INFOSWITCH CORPORATION

I. Introduction

1. Pursuant to Section 1.415 of the Commission's Rules, Teknekron Infoswitch Corporation ("Infoswitch") hereby comments on the above-captioned Notice of Proposed Rulemaking ("NPRM").

2. Infoswitch's primary product is an inbound, automatic call distribution system. Infoswitch also developed and now markets an outbound system, the Customer Contact Management System™ ("CCMS"™), purchased by our customers primarily for telemarketing and credit collection activities. The CCMS incorporates predictive dialing (i.e., an "automatic telephone dialing system").

3. In the Telephone Consumer Protection Act of 1991 ("TCPA"), Congress added Section 227 to the Communications Act of 1934, as amended. This new Section 227 restricts the use of automatic telephone dialing systems for telemarketing purposes. Under Section 227, the Commission is required to propose and adopt rules implementing such restrictions and establishing exemptions thereto.

4. Among the exemptions that the Commission, in the NPRM, proposes, are calls made to former or existing clientele. NPRM at paras. 13-16. Debt collection calls made by the

creditor or by its agent are singled out as falling within this proposed exemption. Id. at para. 16.

5. Given Infoswitch's substantial experience in this product area, as well as its on-going systems integration and customization work, it supports the Commission's conclusion that debt collection calls should be exempt from Section 227. However, as set forth below, to ensure that there is no uncertainty regarding the status of debt collection calls under Section 227, Infoswitch proposes revising Section 64.1100 (c)(3) to expressly include calls made for debt collection purposes and made by an agent or representative of the "caller."

6. In the NPRM, the Commission also proposes adoption of a national data base to include telephone numbers of residential subscribers who object to receiving telephone solicitations. Id. at para. 28. Infoswitch considers establishment of such a data base to be unnecessary. Technology exists that can limit calls placed, most debt collection calls are made by live operators, and restrictions imposed under the TCPA will decrease the number of unsolicited calls substantially.

II. General Comments

7. In general, the TCPA presents a balanced solution to the privacy rights of consumers versus the economic and commercial interests of telemarketers. Infoswitch endorses Congressional implementation of federal legislation as a means of establishing uniform nationwide regulation and avoiding piece-meal and inconsistent state actions.

III. Specific Comments

- (a) The Commission must expressly exempt debt collection calls from Section 227.

8. Infoswitch supports the Commission's tentative conclusion that debt collection calls are to be exempt from Section 227 and recognizes that the legislative history of the TCPA supports this exemption. However, the Commission, in the NPRM, does not expressly exempt debt collection calls, made by the creditor or by its agent, in its proposed Section 64.1100(c)(3).

9. Rather than leave this significant issue to interpretation, the exemption should be codified. This is particularly important because, in most cases, the actual "caller" will only be the agent of the person with whom there was a "prior or current business relationship."

10. To eliminate any ambiguity, Infoswitch proposes that Section 64.1100(c)(3) be revised as follows:

- (c) The term "telephone call" in §64.1100 (a)(2) shall not include a call or message by a caller, or by any individual, including an agent or representative, on behalf of a caller:

- (3) to any person with whom the caller has had a prior or current business relationship at the time the call is made, including, but not limited to, a relationship creating a debt between the caller and the called party, or
- (b) The Commission does not need to establish a national data base of residential subscribers who object to receiving telephone solicitations.

11. Under the TCPA, Congress seeks to protect residential subscribers who object to receiving telephone solicitations. Pursuant to Section 227 (c)(3), the Commission has the discretion to propose the establishment and operation of a single national data base to compile a list of these subscriber's telephone numbers.

In the NPRM, the Commission proposes myriad regulatory alternatives for restricting telephone solicitations, including establishment of the national data base referenced in Section 227 (c)(3).

12. Infoswitch endorses the concept of industry-based or company specific Do Not Call ("DNC") Lists in lieu of a national database. The substantial questions concerning the viability of a national database, its cost, and the responsibility for such costs, suggest that this is an initiative which should be avoided until less extensive and less expensive solutions are explored.

13. This is particularly true since the TCPA is the first step in addressing perceived telemarketing abuses. At this point in time, it appears prudent to allow the industry an opportunity to self-police rather than mandating development of an extensive national database.

14. It is premature to assume that, in the wake of the debate raised by the TCPA, telemarketers will not act in an increasingly responsible manner. In fact, because of the demands of the market place, Infoswitch, as well as some other outbound manufacturers, have created software which allows outbound calls to be based on time of day, and frequency of call restrictions, as well as a feature for call backs at time of customer request. Increasingly sophisticated software will enable telemarketers to further enhance their service by making it less intrusive, thus obviating the need for the type of national database suggested by the Commission.

15. Furthermore, creation of a national data base or other means of restricting unsolicited telephone calls is unnecessary. Most automatic telephone dialing systems are not paired with pre-recorded messages. For instance, Infoswitch's users are over ninety percent

(90%) live agent operated. This, coupled with the fact that our CCMS is usually purchased for use with pre-qualified lists for dialing (i.e., already identified, rather than randomly dialed numbers) means that it is relatively easy to screen out "do not call numbers." Thus, whenever a consumer advises a CCMS user that they no longer wish to be contacted, such information can be entered into the database of the Outbound product and subsequent calls can be avoided. Because this capability is technically available, there does not appear to be any obstacle to its use by telemarketers. This DNC list approach is similar to that used successfully in the mail order industry and will protect the privacy rights of the individuals without being unduly burdensome to telemarketers.

- (c) Automatic dialing should be permitted when the called party paying for the call is reimbursed.

16. Pursuant to proposed Section 64.1100 (a)(1)(iii), use of an automatic dialing system to a telephone number, where the called party is charged for the call, is prohibited. One of Infoswitch's customers has designed a program which automatically signals that reimbursement is due the called party whenever this occurs. Given the availability of this technology, the Commission should consider revising Section 64.1100(a)(1)(iii) to permit use of automatic dialing systems when the called party will be reimbursed.

Conclusion

17. It is Infoswitch's position that telemarketing when used responsibly, is of great convenience and economic value to the consumer. As one of our users so aptly notes, "it's only a nuisance call when the caller does not buy." The rapid increase in revenues generated by telemarketers is ample evidence of the convenience and usefulness of this new

technology. Infoswitch applauds Congressional and Commission efforts at fairly resolving the competing interests of all interested parties.

Respectfully submitted:

TEKNEKRON INFOSWITCH CORPORATION

A handwritten signature in black ink, appearing to read "Michael J. Tamer", is written over a horizontal line.

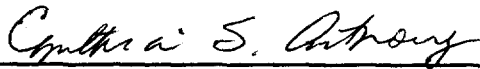
Michael J. Tamer, President
4425 Cambridge Road
Ft. Worth, TX 76155
(817) 267-3025, ext. 401
FAX: (817) 571-9464

May 22, 1992

CERTIFICATE OF SERVICE

I, Cynthia S. Anthony, General Counsel for Teknekron Infoswitch Corporation, do hereby certify that the above Comments was hand-delivered on the 22nd day of May, 1992, to:

Olga Madruga-Forti
Domestic Facilities Division
Federal Communications Commission
2025 M Street, N.W., Room 6008
Washington, D.C. 20554



Cynthia S. Anthony

May 22, 1992